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PETITION AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 141

THE UNITED STATES, PETITIONER

vs.

FACTORS & FINANCE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 7, 1933
CERTIORARI GRANTED OCTOBER 10, 1933

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES, PETITIONER

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Supreme Court of the United States

October term, 1932

No. 141

THE UNITED STATES, PETITIONER

v.

FACTORS & FINANCE COMPANY

Petition for a writ of certiorari to the United States Court of Claims

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case rendered March 7, 1932, and reported in 56 F. (2d) 902.

QUESTION PRESENTED

Within the statutory period for filing claims for refund respondent filed a general claim which did not specify any particular ground for its allowance or state any facts in support of the claim. After the period for filing claims had expired, respondent filed an amendment to the original claim for refund, which did specify the ground upon which refund was sought. The question is whether this was a sufficient compliance with the statute requiring claims for refund to be filed within a stated period in order to maintain a suit for the recovery of a tax.

STATUTES AND REGULATIONS INVOLVED

R. S. 3228 (a) as reenacted in section 1012 of the revenue act of 1924, c. 234, 43 Stat. 253, 342, provides:

2 "SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the revenue act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum."

R. S. 3226 as reenacted in section 1113 of the revenue act of 1926, c. 27, 44 Stat. 9, 116, provides:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been

erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

Section 284 of the revenue act of 1926, c. 27, 44 Stat. 9, 66, provides in part as follows:

"SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, * * * the revenue act of 1917, the revenue act of 1918, the revenue act of 1921, or the revenue act of 1924, or any such act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-
3 profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

"(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

"(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund."

Article 1036 of regulations 62, promulgated under the revenue act of 1921, provides in part:

"CLAIMS FOR REFUND OF TAXES ERRONEOUSLY COLLECTED.—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath."

Similar regulations have been in force under all the income tax acts.

STATEMENT

Respondent sued in the Court of Claims to recover an overpayment of $19,995.44 of income and excess-profits taxes for the year 1917. The court found the facts as follows:

Respondent filed its income and excess-profits tax return for the year 1917 on June 15, 1918, and paid the reported tax of $177,338.72 on or about that date. In August, 1920, an additional tax of $25,-327.91 was assessed for 1917. Respondent paid $9,388.57 of
4 this assessment, and filed a claim for abatement of the balance of $15,933.34, in October, 1920. The commissioner ordered an investigation of respondent's affairs in connection with the claim for abatement. Following the investigation he notified respondent, in January, 1923, that it had been overassessed for the year 1917.

On February 27, 1923, respondent filed with the collector of internal revenue for Rhode Island a claim for refund of $177,606.04 for the year 1917. The claim stated that it was filed "in order to save the taxpayer's rights under the pertinent statutes covering abatements, credits, and refunds of income and excess-profits taxes of 1917, and to permit the commissioner to refund to deponent any excess paid over taxes actually found to be due." The claim for refund was received by the commissioner on March 20, 1923. Before then he had concluded his consideration of the claim for abatement and determined that respondent had been overassessed $3,293.89 for the year 1917. A certificate of overassessment was accordingly sent to respondent in November, 1923, and in that month respondent paid $12,639.45, the balance of the additional assessment of 1920 as reduced by the amount of overassessment, plus $3,028.24 in interest.

On July 17, 1925, the commissioner not having acted on the February, 1923, claim for refund, respondent filed an amendment to and amplification of that claim, asking special assessment of the 1917 tax under section 210 of the revenue act of 1917, c. 63, 40 Stat. 300, 307, which authorized a special method of assessment where the invested capital was not satisfactorily determinable.

5 The commissioner took the claim for refund under consideration, and, after a hearing on June 22, 1926, concluded that the profits tax for 1917 should be computed under section 210 of the 1917 act. He therefore determined that respondent had been overassessed for 1917 by the sum of $32,634.89, all of which had been paid. On January 13, 1927, the commissioner notified respondent that $19,995.44 of the overpayment was barred by the statute of limitations, since the claim for refund of February 27, 1923, did not ask for special assessment under section 210 of the revenue act of 1917, and the claim for refund of July, 1925, which did, was not filed within the statutory period. In April, 1927, a certificate of overassessment for the part of the tax which was not barred by limitations was issued, and in June, 1927, the sum of $12,639.45, which respondent had paid in November, 1923, plus the $3,028.24 interest which respondent had paid on that sum, was refunded.

This suit was filed in the Court of Claims on January 9, 1929. That court gave judgment for respondent in the sum of $19,995.44, with interest from the date of payment. The opinion of the court, by Littleton, J., took the view that a timely claim for refund, though in general terms, gives the commissioner "jurisdiction" to refund an overpayment and stops the running of the statute of limitations, and that the general claim may be amended to state a specific ground at any time before the commissioner makes his decision. Williams, J., dissented, and Whaley, J., did not sit.

6 SPECIFICATION OF ERRORS

1. The Court of Claims erred in holding that an amended claim for refund, filed after the expiration of the statutory period for filing claims for refund, was a sufficient compliance with the statute to permit maintenance of a suit for the recovery of a tax, even though the original claim for refund specified no grounds for the allowance of the claim.

2. The Court of Claims erred in giving judgment for respondent.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in direct conflict with decisions of the Circuit Court of Appeals for the Second Circuit. In Art Metal Construction Co. v. United States, 47 F. (2d) 558, the taxpayer filed within the statutory period a general claim for refund of its 1918 income and excess-profits taxes, which specified no particular grounds. After the time for filing claims had expired and before the commissioner acted on the original claim, the taxpayer filed a brief with the commissioner requesting special assessment of its 1918 taxes under section 328 of the revenue act of 1918, c. 18, 40 Stat. 1057, 1093. The court expressly assumed that the brief was an adequate claim for refund if filed in time. The commissioner determined that there had been an overassessment for 1918 because the taxpayer was entitled to special assessment for that year, but refused to refund the overpayment on the ground that the claim for refund had been filed too late. On grounds closely similar to those advanced by the court below in the present case, the District
7 Court had permitted recovery of the tax. (35 F. (2d) 379 (W. D. N. Y.) The Circuit Court of Appeals for the Second Circuit reversed, holding that the original claim for refund was no claim at all and that the later claim was too late. The court said that no action of the commissioner [in considering the claim] could toll the statute of limitations once the time had run. Thus the case is not distinguishable from the present one on the facts. This court denied certiorari. (283 U. S. 863.)

On similar facts the Circuit Court of Appeals for the Second Circuit in Zeller v. United States, 46 F. (2d) 1023, reversed a judgment of the District Court, 35 F. (2d) 870 (W. D. N. Y.), on the authority of the Art Metal case. This court denied certiorari. (283 U. S. 863.)

Two recent cases in the District Courts have applied the rule of the Art Metal case to similar facts. Marble Chair Co. v. United States, decided February 1, 1932 (N. D. Ohio), 1932 Prentice-Hall Federal Tax Service, p. 791; Elbee Chocolate Co. v. United States, decided May 6, 1932 (E. D. N. Y.), 1932 Prentice-Hall Federal Tax Service, p. 1469. See also Bemis Bros. Bag Co. v. United States, 56 F. (2d) 407 (E. D. Mo.)

The decision of the court below also conflicts in principle with a number of decisions holding that where a claim for refund is rejected, suit may not be maintained on a ground not specified in the rejected claim because of the filing, after the running of the statute of limitations, of an amendment to the original claim. Solomon *v.*
United States, 57 F. (2d) 150 (C. C. A. 2d); Jonesboro Gro-
8 cery Co. v. United States, 66 C. Cls. 320, certiorari denied;
280 U. S. 562; Mutual Life Ins. Co. v. United States, 49 F. (2d) 662 (C. Cls.), certiorari denied, 284 U. S. 628: Sugar Land Ry. Co. v. United States, 71 C. Cls. 628; National Cattle Loan Co. v. United States, decided December 30, 1931 (E. D. Ill.), 1932 Prentice-Hall Federal Tax Service, p. 1259. The question in these cases was argued to this Court in United States v. Swift & Co., 282 U. S. 468, and in Leach v. Nichols, 285 U. S. 165, but was expressly left open by the opinion of the court in each case.

Further confusion is added by decisions to the effect that defective claims for refund (as distinguished from general claims which are nullities) may be amended after the running of the period of limitations so as to provide a basis for suit. McKesson & Robbins, Inc., v. Edwards, Collector, 57 F. (2d) 147 (C. C. A. 2d); Swift & Co. v. United States, 67 C. Cls. 322. See also Prentiss & Co. v. United States, 57 F. (2d) 676 (C. C. A. 2d).

In two cases decided by the Court of Claims after the instant decision, the court below held that a general claim for refund gives the commissioner "jurisdiction" to refund an overpayment of taxes or interest thereon, and that suit may be maintained where he refuses to do so even though the general claim had never been
amended, if the commissioner was in fact acquainted with the
9 grounds upon which refund was sought. Lancaster Cotton
Mills v. United States, No. J–596, decided May 31, 1932; Memphis Cotton Oil Co. v. United States, No. L–173, decided May 31, 1932. In the latter decision the court expressly recognized the conflict with the decision of the Circuit Court of Appeals for the Second Circuit in Art Metal Construction Co. v. United States, supra, 47 F. (2d) 558. The Department of Justice is now considering whether to file petitions for certiorari in the Lancaster Cotton Mills and Memphis Cotton Oil Co. cases, supra, and if such petitions are filed they will refer to the present case, and we respectfully suggest that the court consider them together.

2. The decision of the court below is wrong. No suit could have been maintained on the basis of the general claim for refund of Feb-

ruary 27, 1923. United States v. Felt & Tarrant Mfg. Co., 283 U. S. 269. This court there said that (p. 272)—

"the statute is not satisfied by the filing of a paper which gives no notice of the amount or nature of the claim for which the suit is brought, and refers to no facts upon which it may be founded."

As Judge Learned Hand said in the Art Metal case, supra, the general claim "was no claim at all." (47 F. (2d) 558, 559.) Hence the filing of the general claim did not, as the court below said it did, toll the statute of limitations.

3. The question presented is one of current importance. The
10 provisions of R. S. 3226 and 3228, supra, are before the courts in an increasing number of cases. The question is a live one to-day, as shown by the number of recent cases cited in this petition. The question is one which may be involved in any suit to recover internal revenue taxes, and we are informed by the Treasury Department that the question whether a claim for refund may be amended after the running of the statute of limitations arises in thousands of cases. The instant decision and the recent decisions of the Circuit Court of Appeals for the Second Circuit, which have been cited supra, have produced great confusion with regard to existing claims, as under the decision of the court below any claim, however old and however general, may now be amended, if it has not yet been passed on by the commissioner, by filing a claim stating new grounds; and suit may then be brought thereon. Without an authoritative decision by this court the Treasury Department is unable to determine the rule applicable to these cases.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

JUNE, 1932.

11 In the Court of Claims

No. K-13

FACTORS AND FINANCE CO., INC.

v.

THE UNITED STATES

I. *Petition*

Filed January 9, 1929

TO THE HONORABLE JUDGES OF THE COURT OF CLAIMS:

Your petitioner, Factors and Finance Co., Inc., respectfully shows to this honorable court:

I

That at all times hereinafter mentioned your petitioner was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island. That up to and about the year 1920 your petitioner's corporate name was Stillwater Worsted Company, Incorporated, until, at such time, to wit, about the year 1920, your petitioner, by due process of law, caused its name to be changed to Factors and Finance Company, Incorporated, from which time said last aforementioned name has been, and still is, the corporate name of your petitioner. That at all times hereinafter mentioned and up to or about the year 1920 the principal place of business of your petitioner was at Harrisville, Rhode Island, and that from and after about the year 1920 the principal place of business of your petitioner was, and still is, in the borough of Manhattan, city, county, and State of New York. Your petitioner presents this, its petition and claim, in its own right as such corporation, and against the United States.

12 II

That at all times hereinafter mentioned your petitioner was engaged in the manufacturing and sale of worsted textile fabrics.

III

That on or about June 15, 1918, pursuant to the provisions of the revenue act of 1917, your petitioner duly filed its income and excess-profits tax return for the calendar year ending December 31, 1917, and, in accordance with said act, paid, on or about the 15th day of June, 1918, to the collector of internal revenue the tax shown by the said return, to wit, the sum of $177,338.72, which amount was the original assessment against your petitioner. That thereafter, and in or about the month of May, 1920, there was further assessed against your petitioner, in connection with the said return so filed, and as additional tax for the calendar year 1917, under the said act above referred to, the sum of $267.32, which sum was duly paid to the collector of internal revenue by your petitioner.

IV

That thereafter and in or about the month of August, 1920, there was further assessed against your petitioner, in connection with the said return so filed, and as further additional tax for the calendar year 1917, under the said act above referred to, the sum of $25,321.91; that your petitioner thereupon duly paid on account thereof the sum of $9,388.57, thus leaving an alleged balance due by your petitioner thereon in the sum of $15,933.34; that thereafter and in or about the month of November, 1923, there was duly granted, issued and

13 allowed to your petitioner, as a credit against its said taxes for the year 1917, by the Commissioner of Internal Revenue,

a certificate of overassessment in the sum of $3,293.89; and that thereafter and in or about the month of November, 1923, your petitioner duly paid to the collector of internal revenue the said balance of taxes alleged to be due by your petitioner, in the sum of $12,639.45, together with accrued interest thereon in the sum of $3,028.24. That by virtue of the facts above stated, your petitioner duly paid to the collector of internal revenue for its income and excess-profits taxes for the calendar year 1917 the aggregate sum of $199,634.06, assessed against your petitioner as above set forth, together with accrued interest in the amount of $3,028.24, all of which amount, as your petitioner is informed and verily believes, was turned over by the said collector and deposited into the Treasury of the United States, as in the usual course of his official business.

V

That section 210 of the said revenue act of 1917 provides as follows:

"That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the $3,000 or $6,000 therein referred to) for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received
14 by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

"For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used."

VI

That by reason of the facts and circumstances surrounding the creation, continuance, and operations of your petitioner, and by reason of the abnormalties existing with respect thereto throughout the year 1917, it was, under the said provisions of section 210, impossible for the Secretary of the Treasury satisfactorily to determine the invested capital of your petitioner, and your petitioner was accordingly entitled to have its said taxes for the said year 1917

estimated, calculated, and assessed under and pursuant to the provisions of said section 210, and that as so calculated your petitioner's said total income and excess-profits taxes for the year 1917 would not, and should not, have been in excess of the sum of $166,999.17.

VII

That thereafter, and within the time prescribed by law therefor, on or about the 27th day of February, 1923, your petitioner
15 duly filed with the collector of internal revenue a claim for refund in the sum of $177,606.04, a copy of which is annexed hereto, marked "Exhibit A," and made a part hereof, which said claim for refund was duly executed by your petitioner prior to so being filed.

VIII

That thereafter, on or about the 17th day of July, 1925, and prior to any action being taken or determination being made by the Commissioner of Internal Revenue upon said claim for refund, filed as set forth in Paragraph VII herein, your petitioner duly filed with the collector of internal revenue an amended claim for refund, in amplification of the said refund claim so first filed, a copy of which is annexed hereto, marked "Exhibit B," and made a part hereof, which said amended claim for refund was duly executed by your petitioner prior to so being filed. That all of the facts and matters set forth in the said amended claim for refund immediately herein above referred to, were true and are herewith referred to and made a part of this petition, as though herein specifically and in detail incorporated.

IX

That the said claim for refund and amended claim for refund as above referred to were duly filed prior to any determination made by the Secretary of the Treasury with respect to the rights of your petitioner to have its said income and excess-profits taxes correctly calculated, and more particularly with respect to the provisions contained in the said section 210 of the revenue act of 1917.

16 X

That thereafter the said claim for refund, as originally filed and as so amended, was duly considered by the Commissioner of Internal Revenue, and subsequently thereto the said Commissioner of Internal Revenue notified your petitioner of the result of his determination thereon by official letter dated January 13, 1927, a copy of which is annexed hereto, marked "Exhibit C," and made a part hereof.

XI

That the aforementioned January 13, 1927, letter from the Commissioner of Internal Revenue determined the correct income and excess-profits taxes of your petitioner for the year 1917 to be in the amount of $166,999.17, which was $32,634.89 less than the actual taxes theretofore assessed and paid, as above set forth, by your petitioner for the said year. The Commissioner of Internal Revenue further indicated, then and there, that the overassessment against your petitioner for the year 1917 was in the amount of $32,634.89.

XII

That, by virtue of the facts above set forth, your petitioner was entitled to a refund in the sum of $32,634.89, together with accrued interest thereon, which sum should have been returned and paid to your petitioner herein, but of which sum only the sum of $12,639.45, plus accrued interest thereon, was paid to your petitioner, leaving, by reason of the facts above set forth, the sum of $19,995.44, together with accrued interest thereon, due to your petitioner, no part of which has since been paid.

17 XIII

Your petitioner is informed, advised and believes, and therefore alleges that on or about April 23, 1927, the commissioner rejected your petitioner's claim for refund in the amount of $19,995.44, together with interest thereon, by signing, on that day, the schedule rejecting such claim.

XIV

Your petitioner avers that there is justly due and owing to it from the United States, on account of the matters herein set forth, the sum of $19,995.44, together with accrued interest thereon, after deducting all just set-offs or demands on the part of the United States.

XV

Claimant avers that it is, and always has been, the sole owner of the claim hereinbefore referred to, and has not assigned or transferred the whole or any part thereof or interest therein, and that it has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided or abetted or given encouragement to rebellion against the said Government, and it believes the facts as stated herein to be true, and that it is justly entitled to the amount herein claimed from the United States, after allowing all just credits and off-sets.

18 Wherefore petitioner prays judgment against the United States in the sum of $19,995.44, with interest thereon.

FACTORS AND FINANCE CO., INC.,
By (Signed) WM. I. SPIEGELBERG,
President.
[CORPORATE SEAL.]

J. GILMER KORNER, JR.,
404 Transportation Building, Washington, D. C.,
Attorney of Record.

SAMUEL M. FISHER,
Of Counsel.

JOSEPH J. KLEIN,
Of Counsel.

[*Duly sworn to by William I. Spiegelberg; jurat omitted in printing.*]

19 *Exhibit A to petition*

[Claim executed on Treasury Dept. Form 843]

CLAIM FOR

ABATEMENT OF TAX ASSESSED
CREDIT AGAINST OUTSTANDING ASSESSMENTS
REFUND OF TAXES ILLEGALLY COLLECTED
REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

Stillwater Worsted Company, Inc., Harrisville, R. I.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statements are true and complete.

	Period	Year
	From: Jan. 1	1917
	To: Dec. 31	1917
1. Business in which engaged: Manufacturing worsted goods.		
2. Character of assessment or tax: Income and excess-profits tax.		
3. Amount of assessment or stamps purchased		$177,606.04
4. Reduction of tax liability requested (income and profits tax)		$177,606.04
5. Amount to be abated		$
6. Amount to be refunded (or such greater amount as is legally refundable)		$177,606.04
7. Dates of payment (see collector's receipts or indorsements of canceled checks): June 15, 1918–June 30, 1920. (If statement cover income-tax liability, items 8–11, inclusive, must be answered.)		
8. District in which return (if any) was filed: Providence, R. I.		
9. District in which unpaid assessment appears		
10. Amount of overpayment claimed as credit		$
11. Unpaid assessment against which credit is asked; period from ____ to____		$

20 Deponent verily believes that this application should be allowed for the following reasons:

Claimant's taxes for 1917 have not been finally passed upon by the Commissioner of Internal Revenue. This claim for refund is filed in order to save taxpayer's rights under the pertinent statutes governing abatements, credits, and refunds of income and excess-profits taxes of 1917, and to permit the commissioner to refund to deponent any excess paid over taxes actually found to be due.

21 *Exhibit B to petition*

[Claim executed on Treasury Dept. Form 843]

CLAIM FOR

ABATEMENT OF TAX ASSESSED
CREDIT AGAINST OUTSTANDING ASSESSMENTS
X REFUND OF TAXES ILLEGALLY COLLECTED
REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OF EXCESS

STATE OF NEW YORK,
County of New York, ss:

Factors and Finance Co., Inc. (formerly Stillwater Worsted Co., Inc.), 257 Fourth Avenue, New York, N. Y.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete.

	Period	Year
	From: Jan. 1	1917
	To: Dec. 31	1917
1. Business in which engaged: Manufacturing worsted goods.		
2. Character of assessment or tax: Income and profits taxes.		
3. Amount of assessment or stamps purchased		$177,606.04
4. Reduction of tax liability requested (income and profits tax)		$177,606.04
5. Amount to be abated		$
6. Amount to be refunded or such greater amount as is legally refundable)		$177,606.04
7. Dates of payment (see collector's receipts or indorsements of canceled check): statutory due dates. (If statement covers income tax liability, items 8–11, inclusive, must be answered.)		
8. District in which return (if any) was filed: Providence, R. I., or Hartford, Conn.		
9. District in which unpaid assessment appears		
10. Amount of overpayment claimed as credit		$
11. Unpaid assessment against which credit is asked: period from to		$

22 Deponent verily believes that this application should be allowed for the following reasons:

Before the tolling of the statute of limitations for 1917 taxes and on or about February 27, 1923, taxpayer filed a 1917 refund claim for the full amount of the 1917 tax paid, $177,606.04, and this document is merely the amplification of said claim, setting forth the details in the matter.

Taxpayer hereby makes application for assessment under the provision of section 210 of the revenue act of 1917 for the reasons set

forth in the attached sheets, and respectfully requests the tax adjustments shown thereon.

Statement attached to the 1917 refund claim of taxes of Factors and Finance Co. Inc. (ormerly Stillwater Worsted Co., Inc.), 257 Fourth Ave., New York, N. Y.

REASONS:

(A) Taxpayer respectfully states that, if the tax is determined without the benefit of section 210, owing to certain abnormal conditions, it will work exceptional hardship upon the taxpayer, evidenced by the gross disproportion between the tax computed without the benefit of this section, and the tax computed by reference to the representative corporations specified in section 210. The abnormalities claimed are clearly indicated by the following percentages, which show a 104.8% return on investment, and a profits tax payment of 48.4% of its net income:

(a) Invested capital	$369,954.27
(b) Net taxable income	387,706.57
(c) Excess and war profits taxes	187,629.43
(d) Income taxes	12,004.63
(e) Total tax	199,634.06
(f) % which (b) is of (a)	104.8
(g) % which (c) is of (a)	50.7
(h) % which (c) is of (b)	48.4

FACTS:

(B) The reasons set forth in (A) above are predicated on the following facts, which compare taxpayer's 1917 tax data with that of representative concerns:

23 *Statement attached to the 1917 refund claim of taxes of Factors and Finance Company, Inc. (formerly Stillwater Worsted Company, Inc.), 257 Fourth Avenue, New York, N. Y.*

	(a) Invested capital	(b) Net taxable income	(c) Excess and war-profits taxes	(d) Total taxes	% which (b) is of (a)	% which (c) is of (a)	% which (c) is of (b)
Taxpayer	$369,954.27	$387,706.57	$187,629.43	$199,634.06	104.8	50.7	48.4
Montrose Woolen Co.*			136,066.34	144,335.76			49.6
Montrose Woolen Co.†	237,562.94	274,258.06	88,899.73	99,999.15	115.4	37.4	32.4
Merion Worsted Mills					28.6		20.7
Empire Worsted Mills					30.0		23.0
American Association of Woolen and Worsted Mfrs. (compilation average)					43.1		27.9

*Before being granted relief under section 210.
†After being granted relief under section 210.

DESCRIPTION OF BUSINESS:

(C) The business of the Stillwater Worsted Co., Inc., was the manufacture and sale of men's worsted merchandise in the piece. The operations of this concern, during 1917, began with the purchase of yarn and proceeded thence with weaving and the various other processes required for the manufacture thereof into finished worsted goods in the piece.

INVESTED CAPITAL, ETC.:

(D) The Stillwater Worsted Company, Inc., ceased business operations at the end of 1911, and liquidated all of its assets and liabilities and retired all of its stock with the exception of eight (8) shares of common stock which were left for the purpose of keeping the corporation alive as an entity. The shell of the corporation continued thus though the years 1912, 1913, and 1914, the company during that entire period being quiescent and doing no business, of any nature, whatever. On January 1, 1915, the corporation again started operations, obtaining new capital, and continued uninterruptedly thereafter until December, 1919.

The annual net income and invested capital of the company, as determined by the department, is as follows:

24 *Statement attached to the 1917 refund claim of taxes of Factors and Finance Company, Inc. (formerly Stillwater Worsted Company, Inc.), 257 Fourth Avenue, New York, N. Y.*

Year	Net income	Invested capital
1911	$9,752.88	$66,673.72
1912	None.	800.00
1913	None.	800.00
1914	None.	800.00
1915	73,289.75	65,811.51
1916	187,330.36	171,009.79
1917	387,706.57	369,954.27

(E) The company did not have any governmental cost-plus contracts.

25 *Exhibit C to petition*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Jan. 13, 1927.

Address reply to Commissioner of Internal Revenue and refer to IT:E:SM SEW-30340.

Klein, Hinds, and Fink,
19 West 44th Street, New York, New York.

SIRS: There is enclosed a carbon copy of a letter of this date addressed to the taxpayer whose name and address are given below. This copy is furnished in accordance with the authority conferred upon you by the taxpayer to whom the original letter has been mailed.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By (Signed) LESLIE GILLIS,
Acting Chief of Section.

Enclosure: Copy of letter.

Name and address of taxpayer: Stillwater Worsted Company, Harrisville, Rhode Island.

(1154M.)

26 JAN. 13, 1927.

IT:E:SM SEW-30340.

Stillwater Worsted Company,
Harrisville, Rhode Island.

SIRS: Reference is made to your protest dated May 8, 1926, against the denial of your application for assessment of your profits tax for the year 1917 under the provisions of section 210 of the revenue act of 1917 as set forth in bureau letter dated April 30, 1926.

After a careful review of your protest and of all the evidence submitted in support of your contentions in conference held in this office on June 22, 1926, you are advised that the bureau holds that your profits tax for the year 1917 should be computed under the above-mentioned provisions.

The result of the audit thereunder is as follows:

Net income as corrected		$387,706.57
Profits tax (section 210)		152,911.47
Net income	$387,706.57	
Less: Profits tax	152,911.47	
Balance subject to income tax	$234,795.10	
Income tax at 2%		4,695.90
Income tax at 4%		9,391.80
Total tax liability		166,999.17
Previously assessed:		
Original, account #8751475	$177,338.72	
Additional, May, 1920, page 19, line 5	267.32	
Additional, August, 1920, page 10, line 4	25,321.91	
Total assessed	202,927.95	
27 Less:		
Overassessment October 1, 1923 (schedule #7222)	3,293.89	
		199,634.06
Overassessment indicated		32,634.89
Amount outlawed		19,995.44
Overassessment allowable		12,639.45

In accordance with the above conclusions your two claims for refund in the amounts of $177,606.04, each, aggregating $355,212.08, will be rejected for $342,572.63.

The collector of internal revenue for your district will be officially notified of the rejection at the expiration of thirty days from the date of this letter.

The overassessment shown above will be made the subject of a certificate of overassessment which will reach you in due course through the office of the collector of internal revenue for your district and will be applied by that official in accordance with section 284 (a) of the revenue act of 1926.

With reference to the amount of the overassessment shown above which is outlawed, you are advised that your claim for refund filed February 27, 1923, or within the period of time allowed for the filing of claims, does not outline or specify an application for relief under the provisions of section 210 of the revenue act of 1917,

and your claim for refund filed July 18, 1925, amplifying the former claim and outlining an application under section 210, was not filed within the statutory period.

The refunding of any original tax paid is, therefore, outlawed, as is also the additional tax in the amount of $267.32 assessed on the May, 1920, list, and that part of the additional tax assessed on the August, 1920, list, $25,321.91, not abated in the amount of $9,388.57.

28 Your claim for the abatement of $15,933.34 filed October 2, 1920, has been allowed for $3,293.89, leaving an amount to be refunded represented by the balance of the unallowed portion of the claim for abatement in the amount of $12,639.45 ($15,933.34 less $3,293.89) paid in 1923.

A copy of this communication is being furnished your authorized representatives, Klein, Hinds and Fink, New York, New York.

Respectfully,

(Signed) C. R. NASH,
Assistant to the Commissioner.

TAP–1.

29 II. *General traverse*

Filed February 18, 1929

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HERMAN J. GALLOWAY,
Assistant Attorney General.

III. *Argument and submission of case*

On October 16, 1931, this case was argued and submitted on merits by Mr. J. Gilmer Korner, jr., for plaintiff, and by Mr. George H. Foster, for defendant.

30 IV. *Special findings of fact, conclusion of law, and opinion of the court by Littleton, J.*

Filed March 7, 1932

Mr. J. Gilmer Korner, jr., for the plaintiff.

Mr. Joseph J. Klein, Mr. Myron A. Finke, and Mr. Samuel M. Fisher were on the brief.

Mr. George H. Foster, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

Mr. Charles F. Kincheloe was on the brief.

Messrs. Ivins, Brewster, and Phillips, amici curiae.

This suit is for the recovery of $19,995.44, with interest, representing overpayment of income and profits tax for 1917. There is no

dispute as to the amount of the overpayment. The Commissioner of Internal Revenue in his final audit and determination decided that plaintiff had overpaid its 1917 tax in the amount of $32,634.89. He refunded $12,639.45 tax and $3,028.24 interest paid on November 22, 1923, within four years prior to the determination of the overpayment on or about January 13, 1927. He declined to refund the balance of the overpayment, amounting to $19,995.44, on the ground that no sufficient timely claim for refund had been filed. The issue is whether, in the circumstances of this case, a claim for refund for a particular taxable year timely filed by plaintiff, but which claim did not specify any particular item or items causing an overpayment and did not contain any statement of facts showing an overpayment, could be amplified and amended before the commissioner had considered and acted upon it so as to specify the ground of the overpayment for the same years and the facts to sustain it.

SPECIAL FINDINGS OF FACT

1. At all times hereinafter mentioned the plaintiff was and still is a Rhode Island corporation engaged in the manufacture and sale of worsted textile fabrics, with principal place of business at Harrisville. Its corporate name was Stillwater Worsted Co., Inc., until 1920, when its name was changed to Factors and Finance Co., Inc.

2. June 15, 1918, plaintiff duly filed its income and profits tax returns for the calendar years 1917 and on or about that date paid to the collector the tax shown thereon of $177,338.72. Thereafter, in May, 1920, the commissioner assessed an additional tax of $267.32, which was paid June 29, 1920. In August, 1920, the commissioner made a further assessment of an additional tax in the amount
31 of $25,327.91 for 1917. October 4, 1920, plaintiff paid $9,388.57 thereof, leaving a balance alleged to be due of $15,933.34. On October 1, 1920, plaintiff executed a claim for abatement of $15,933.34 on Treasury Form 47, which was filed October 2, 1920. This claim was made and filed pursuant to advice received by the taxpayer from the officials of the Bureau of Internal Revenue on September 20, 1920.

3. Thereafter an examination of the affairs of the taxpayer in connection with its claim for abatement was ordered by the commissioner May 6, 1921, and pursuant thereto an examination was made by an agent of the Bureau of Internal Revenue between May 18 and June 7, 1922. A report of this investigation was made to the Commissioner of Internal Revenue August 4, 1922, and was received by him August 22, 1922. This examination and report was made in connection with plaintiff's claim for abatement theretofore filed.

4. January 16, 1923, the commissioner advised the plaintiff by letter that an examination of its claim for abatement had been made and that, pursuant thereto, certain adjustments had been made resulting in certain overassessments for 1916 and 1917. This letter is

in evidence as Exhibit H and is made a part hereof by reference. On February 9, 1923, plaintiff filed with the commissioner a brief setting forth exceptions to the proposed overassessments for 1916 and 1917.

5. February 27, 1923, before the Commissioner of Internal Revenue had made and notified the plaintiff of his final determination in connection with his audit of plaintiff's tax liability for 1917 and of his final action on the claim for abatement, plaintiff filed with the collector of internal revenue of Rhode Island a claim for refund of $177,606.04 for 1917. This claim is attached to the petition as Exhibit A and is made a part hereof by reference. This claim, filed on Treasury Form 843, recited the amount claimed to be refundable and that said amount had theretofore been paid on June 15, 1918, and June 30, 1920. The claim was under oath and set forth that it was filed for the purpose of enabling the commissioner to refund to the taxpayer any amount of taxes paid by it on account of the income and profits taxes for 1917 in excess of its true tax liability for that year, and that the true tax liability had not been finally determined by the commissioner. The claim also stated that "Claimant's taxes for 1917 have not been finally passed upon by the Commissioner of Internal Revenue. This claim for refund is filed in order to save the taxpayer's right under the pertinent statutes covering abatements, credits, and refunds of income and excess-profits taxes of 1917, and to permit the commissioner to refund to deponent any excess paid over taxes actually found to be due." The claim was forwarded by the collector to the commissioner and was received by the latter March 20, 1923.

Shortly prior to the date of receipt of the claim for refund by the commissioner on March 20, 1923, he had considered, audited, and reviewed the claim for abatement filed October 2, 1920, and had made certain adjustments in the tax liability for 1917 resulting in the determination of an overassessment of $3,293.89. These determinations and adjustments were in connection with the claim in abatement and were predicated upon the report of the internal revenue agent, made in connection with the abatement claim and
32 upon statements submitted by the taxpayer in support of its claim for abatement of $15,933.34. As a result of this consideration, audit, and review, the commissioner prepared a certificate of overassessment which was forwarded to the plaintiff some time during November, 1923.

The commissioner in his audit and consideration of plaintiff's claim for abatment, as aforesaid, did not consider or act upon the claim for refund filed February 27, 1923.

6. Upon the receipt by plaintiff of the certificate of overassessment from the commissioner, the plaintiff on November 22, 1923, paid to the collector of internal revenue the balance of the taxes alleged to be due by the certificate of overassessment in the amount of $12,639.45, representing the difference between the amount claimed

in the claim for abatement and the amount shown as the overassessment in the certificate of overassessment. Plaintiff also paid interest of $3,028.24. The total tax paid by plaintiff for the calendar year 1917, representing the original and additional assessments, amounted to $199,634.06, together with accrued interest of $3,028.24. The true and correct tax liability of the plaintiff on account of the income and excess profits tax for the calendar year 1917, under and pursuant to the pertinent provisions of the revenue act of 1917, was $166,999.17, being $32,634.89 less than the amount paid by the plaintiff, as aforesaid.

7. The Commissioner of Internal Revenue took no action with reference to the consideration or determination prior to July 17, 1925, relative to the claim for refund filed February 27, 1923, or as to its allowance or its rejection.

On July 17, 1925, and prior to any action being taken upon, or consideration or determination given to, the claim filed February 27, 1923, plaintiff duly filed with the collector an amendment to its claim for refund of February 27, 1923, in amplification thereof. In this amendment and amplification plaintiff stated, and specified, that its true tax liability should be determined pursuant to the provisions of section 210 of the revenue act of 1917, which section provided that if the invested capital could not be satisfactorily determined the profits tax should be computed in a certain manner. This claim is attached to the petition as Exhibit B and is in evidence as Exhibit L, and is made a part of this finding by reference. It asks that its claim theretofore filed February 27, 1923, be allowed in the amount therein claimed. The amendment and amplification calling the attention of the commissioner to the pertinent provisions of existing law applicable to the plaintiff's claim for refund, and under which it was entitled to have its true tax liability computed and determined, likewise contained a statement of facts and certain data compiled from the income and profits tax returns for 1917 theretofore filed by the taxpayer. The amendment also contained the statement that "Before the tolling of the statue of limitations for 1917 taxes and on or about February 27, 1923, taxpayer filed a 1917 refund claim for the full amount of the 1917 tax paid, $177,606.04," and this document is merely the amplification of said claim, setting forth the details in the matter. Taxpayer hereby makes application for assessment under the provision of section 210, of the revenue act
33 of 1917, for the reasons set forth in the attached sheets, and respectfully requests the tax adjustments shown thereon."

Thereafter the commissioner entered upon a consideration of the claim for refund and in connection therewith considered the amendment or amplification thereof filed July 17, 1925, and on April 30, 1926, wrote plaintiff a letter that its claim for refund of $177,606.04 for 1917 would be rejected because of insufficiency of proof. This letter is in evidence as Exhibit M and is made a part hereof by reference. To this communication the plaintiff made reply to the com-

missioner on May 8, 1926, in which it called the commissioner's attention to the statement of facts and data submitted with the amendment of the original refund claim. This reply is in evidence as Exhibit N and is made a part hereof by reference. Thereafter, on May 14, 1926, the commissioner, pursuant to the aforementioned communication from the plaintiff, advised it that in accordance with its request a conference upon the claim had been arranged and would be held in his office on June 22, 1926, and that "All of the evidence as to law and facts, which you desire to have considered by the bureau in the final determination of the abnormality or abnormalities alleged, must therefore be submitted at once or as far in advance as possible of the date above fixed, in order that the fullest consideration may be given thereto." This letter is in evidence as Exhibit O and is made a part hereof by reference. Thereafter, on June 22, 1926, a hearing was held in the office of the Commissioner of Internal Revenue at which hearing plaintiff appeared and submitted evidence and data in support of its claim for refund.

8. Thereupon the Commissioner of Internal Revenue considered plaintiff's original and amended claims for refund and the evidence submitted in support thereof and held that the profits tax for 1917 should be computed under the provisions of section 210 of the revenue act of 1917, as claimed. Accordingly, he determined that the true tax liability of plaintiff under the provisions of the revenue act of 1917 for the calendar year 1917 was $166,999.17 instead of $202,727.95, as theretofore determined and assessed by him and instead of $199,634.06 as theretofore collected. He therefore determined that plaintiff had paid as taxes $32,634.89 in excess of the true amount of tax due for 1917. Accordingly, on January 13, 1927, the Commissioner of Internal Revenue advised plaintiff by letter that "After a careful review of your protest and of all the evidence submitted in support of your contentions in a conference held in this office on June 22, 1926, you are advised that the bureau holds that your profits tax for the year 1917 should be computed under the above-mentioned provisions [sec. 210, revenue act of 1917]," and computed an overpayment of $32,634.89. In this letter the commissioner further advised plaintiff that $19,995.44 of the determined overassessment and overpayment was barred by the statute of limitation on the ground that "your claim for refund filed February 27, 1923, or within the period of time allowed for the filing of claims, does not outline or specify an application for relief under the provisions of section 210 of the revenue act of 1917, and your claim for refund filed July 18 [17], 1925, amplifying the former claim and outlining an application under section 210 was not filed with-
34 in the statutory period." This letter is in evidence as Exhibit P and is made a part hereof by reference.

Thereafter the commissioner, on April 8, 1927, executed and mailed to the plaintiff a "Certificate of overassessment" on Treasury Form No. 7776–C, setting forth the true tax to be $166,999.17 and further setting forth that the payments made by plaintiff in excess of its

true tax liability were in the amount of $32,634.89. This document is in evidence as Exhibit R and is made a part hereof by reference.

9. By reason of the provisions of section 210 of the revenue act of 1917, plaintiff was entitled to have its profits tax for 1917 determined and computed under and in accordance with that section.

10. On June 21, 1927, the commissioner refunded to the plaintiff $12,639.45, together with $3,028.24, interest which had been paid thereon. The commissioner declined and refused to refund the balance, i. e., $19,995.44, of the total amount of $32,634.89 found and determined by him to have been overpaid by the plaintiff for 1917.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $19,995.44, with interest as provided by law.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of nineteen thousand nine hundred ninety-five dollars and forty-four cents, with interest at the rate of six per cent per annum from the date of payment thereof to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of subsection (b), section 177 of the Judicial Code, as amended, being a part of the revenue act of May, 1928.

OPINION

LITTLETON, Judge, delivered the opinion of the court:

The question in this case is whether the original claim for refund could be amended after the expiration of five years from the date when the return for 1917 was due. The defendant agrees that if the claim of February 27, 1923, could be amended before it was decided by the commissioner, the plaintiff is entitled to recover.

The refund claim of February 27, 1923, was timely filed. At that time the audit of the plaintiff's 1917 return and the matter of its tax liability were being considered by the Commissioner of Internal Revenue, and he had not made a final decision with reference thereto. Plaintiff could not, of course, know what the result of the audit of the commissioner would be, and the time within which a claim for refund could be legally filed was about to expire. Accordingly it duly filed the claim of February 27, 1923, duly verified, on the form prescribed by the Bureau of Internal Revenue, asking a refund of $177,606.04. This claim did not state any particular item or items as a ground for refund nor did it set forth any facts which would show an overpayment, but it pointed out that the tax liability for 1917 had not been decided by the commissioner and that the claim was being filed to protect the taxpayer's rights under the per-
35 tinent statutes governing refunds and to permit the commissioner to refund any tax paid in excess of that found to be due. At the time this claim was filed there was pending before the com-

missioner a claim for abatement of an additional tax assessed in August, 1920, which claim had been made the subject of a field investigation and audit of taxpayer's books and records. This abatement claim was finally allowed in part and rejected in part by the commissioner, and a certificate of overassessment showing the abatement of $3,293.89 was forwarded to plaintiff in November, 1923. The commissioner did not consider or act upon plaintiff's claim for refund in connection with his consideration of the abatement claim.

On July 17, 1925, and before the commissioner had taken any action with reference to the refund claim of February 27, 1923, plaintiff prepared on the standard Treasury form and duly filed a claim for refund as an amendment and amplification of the earlier claim. The amended claim set forth specifically that the refund should be granted for the reason that the profits tax should be computed under the provisions of section 210 of the revenue act of 1917, and requested the commissioner to make such computation. Section 210 provided that if the invested capital could not be satisfactorily determined the profits tax "shall" be determined and computed in a certain manner. The commissioner took up the consideration of these claims. Evidence in support of the claims was furnished by plaintiff, and hearings were held in the commissioner's office after a consideration of which the commissioner held that the profits tax should be computed under section 210 as claimed by plaintiff, and, as a result of such computation, determined the overpayment, a part of which is here in question. In these circumstances we are of opinion that the claim of July 17, 1925, was a proper amendment and amplification of the original claim of February 27, 1923.

The statutory provisions relating to refund claims for overpayment of taxes fall into two classes: First, section 284 (a) and (b) (1) of the revenue act of 1926, and sections 3220 and 3228 (a) of the Revised Statutes, as amended, provide that the Commissioner of Internal Revenue may not make a refund of overpaid taxes, after a specified period, unless a claim therefor be filed by the taxpayer. So far as a refund by the Commissioner is concerned, these provisions do not require the statement in the claim of the facts or theory upon which the claim is based. He may allow such a claim upon any facts of which he may have knowledge or which he may himself obtain. Second, section 3226 of the Revised Statutes, as amended, provides that before suit can be maintained on a claim for refund a claim must be filed in accordance with the regulations. Reg. 69, art. 1304, which is in substance the same as all previous regulations under the income tax acts provides that "All facts relied upon in support of the claim should be set forth in detail under oath."

The difference in the above statutory provisions is (a) to authorize the commissioner to make a refund of overpaid taxes, he need only have a "claim" therefor before him. No detailed facts need be stated by the taxpayer to enable the commissioner to allow the claim and make a refund. (b) But before the taxpayer can go into court

to review the commissioner's treatment of his case, the facts upon which the claim is based must be brought to the attention of
36 the commissioner, and the commissioner thus accorded the opportunity to consider the contentions that the court will have before it. The purpose of this last requirement is to spare the parties and the courts the burden of litigation in respect to the tax. The first purpose under the statutes of filing a claim for refund is to give the commissioner jurisdiction over the matter. If the commissioner is satisfied that the tax has been overpaid he could make a refund under section 284 (a) and (b) (1) if a mere informal and defective claim or a general "blanket" claim were timely filed with him in which no facts or grounds were stated. Bonwit Teller & Co. v. United States, 283 U. S. 258. He could not, however, make the refund after the period indicated by the statute unless such a claim were filed, even although he had audited the return and found an unquestioned overpayment. Thus, the prime purpose of a refund claim is to give the commissioner jurisdiction over the matter. He may then of his own accord give the taxpayer any relief which he thinks proper.

However, if the taxpayer desires to protect his right to a judicial review of the commissioner's action, if he should not determine that a refund should be made, he should set forth the facts upon which he relies as entitling him to a refund. Such procedure on the part of the taxpayer is required by section 3226, R. S., and the reason for this requirement is clearly established by the decisions of Tucker v. Alexander, 275 U. S. 228; United States v. Felt & Tarrant Mfg. Co., 283 U. S. 269; Feather River Lumber Co. v. United States, 66 C. Cls. 54.

Claims for refund are analogous in theory and purpose to processes and petitions in proceedings in courts and should, we think, be governed by the same rules of law in regard to amendments. In our opinion a timely claim for refund for a particular taxable year, although general in terms, gives the commissioner jurisdiction over the matter of any overpayment of tax for that year, stops the running of the statute of limitations, and the commissioner may, under the relief provisions of the statute or upon facts already in his possession, or upon facts furnished by the taxpayer or facts which he may obtain by his own investigation, repay to the taxpayer any overpayment which he may find in respect to the tax for that particular year. We are of the opinion that the taxpayer may, by amendment or amplification prior to action upon the claim for refund or rejection thereof by the commissioner, bring to the commissioner's attention the particular items of tax liability involved and set forth the detailed facts relied upon; and that a timely claim for refund may thus be amended prior to rejection even though a new or an original claim might be barred by the statute of limitations. Particularly is this true when at the time of filing the refund claim the commissioner had under consideration the audit of plaintiff's tax liability for the year in question in connection with which no decision had been made and the amount of tax which the plain-

tiff might be called upon to pay had not been determined. Until this determination had been made plaintiff did not know what the basis of the commissioner's final decision would be. The Commissioner of Internal Revenue in his letter to the plaintiff of January 13, 1927, advising it of his decision upon the claim, referred to the claim of July 17, 1925, as "amplifying the former claim."

37 The amendment of the claim for refund in this case did not set up a new cause of action. The provisions of the various revenue acts are mandatory in their provisions that the commissioner shall audit the return, determine the correct tax liability, collect any tax found to be due and refund or credit any amount which has been paid in excess of the tax properly due, but it is provided that a refund of the excess tax may not be made unless claim therefor is filed within a specified time. These provisions are similar in purpose and effect to the provisions of Title IX, revenue act of 1924, and Title X, revenue act of 1926, giving the United States Board of Tax Appeals jurisdiction to determine the deficiency or overpayment in respect of the tax upon the filing by the taxpayer within sixty days of a petition in a case where the commissioner has determined a deficiency. Upon the filing of such petition within the statutory period the board acquires jurisdiction of the tax liability for the period specified in a timely petition and may determine the correct amount of the deficiency due or the amount of any overpayment, Peerless Woolen Mills, 13 B. T. A. 1119; Peerless Woolen Mills v. Rose, 28 Fed. (2d) 661. The board has uniformly held that an incomplete or imperfect petition setting forth no grounds or facts, as required by Rule 5 of the board, may be perfected or amended after the time for filing a petition has expired. The board has also held that a taxpayer may amend his petition to restate his case with more accuracy or certainty or to correct a mistake or supply a deficiency so long as it does not thereby declare a new and different cause of action even where the time of limitation has run, and that the nature of the cause of action in general under the original petition is the determination of the correct tax for a certain period. The Peruna Co., 11 B. T. A. 1180, 1188; Marion Shainwald Sevier, 14 B. T. A. 709, 716.

The only restriction upon the power of a tribunal to allow amendments is that it can not permit a party, by amendment, to set up a new cause of action barred by limitation over which the tribunal did not acquire jurisdiction under the original process, petition, or claim. The Commissioner of Internal Revenue having jurisdiction under the claim filed February 27, 1923, to determine an overpayment, was not limited to the theory, grounds, or items of computation that might be the basis of determining it. He had the same authority to consider new contentions directed to the same end, i. e., the determination of the correct amount which had been erroneously collected, that a court would have to allow amendments to a pleading which did not bring in a new cause of action. The statute creates

a cause of action before the Commissioner of Internal Revenue for an overpayment of tax for a given year and not necessarily for each disputed item on or omitted from the return. See St. Louis & S. F. R. Co. v. Loughmiller, 193 Fed. 689; Illinois Surety Co. v. United States, 215 Fed. 334, 339; Swift & Co. v. United States, 67 C. Cls. 322; 14 Op. A. G. 615. Compare Lewis *v.* Reynolds, — U. S. —, decided January 4, 1932. The taxpayer may therefore so long as his claim is pending before the commissioner, and not decided, bring to the attention of the commissioner by amendment specific items and the facts with reference thereto.

38 The defendant relies in this case upon L. O. 1116, III–1 C. B. 350, published by the Solicitor of Internal Revenue in 1924. We think that opinion is not applicable here. The solicitor held that although a claim for refund might be amended, even after rejection, before the expiration of the statutory period for filing a new claim, a claim which had been rejected could not be amended after the expiration of the statutory period. This ruling was sound. Sugar Land Railway Co. v. United States, 71 C. Cls. 628, 48 Fed. (2d) 973; Mutual Life Ins. Co. of New York v. United States, 72 C. Cls. 204, 49 Fed. (2d) 662; Edward Maxson v. United States, 72 C. Cls. 335, 50 Fed. (2d) 276. If a new claim were in order, accepting amendments to the old one would be the same as accepting a new one. If the original claim had been rejected and the time for filing a new one had expired, the commissioner would be without jurisdiction to consider an amendment unless he might reconsider and reopen his decision on the original claim.

In this case the original claim for refund was timely and, though perhaps lacking in adequacy as to details, it gave the commissioner jurisdiction and was susceptible of amplification and amendment. By the amendment filed, before the commissioner had acted, the commissioner was fully advised as to the grounds and the facts relied upon. He was not misled. The rule is settled that a taxpayer may not bring a suit in court to collect a refund of a tax unless he has put the Commissioner of Internal Revenue upon notice of the nature of his claim so that the commissioner may act intelligently on the claim with the facts before him and, thus, have an opportunity to correct errors and mistakes before making his decisions on the claim. The logic of the situation leads to the implication that if a taxpayer has put the commissioner on notice of the nature of his claim and has placed all the facts relating thereto before the commissioner prior to his consideration or action upon such claim, the commissioner then has full opportunity to correct errors and mistakes and to make a proper refund without burdening the parties and the courts with unnecessary litigation. It thus follows that when a condition precedent giving rise to the rule has been met and complied with, the reason for the rule ceases and the rule itself is no longer applicable. In Tucker v. Alexander, supra, the court said: "The statute and the regulations must be read in the light of their purpose. They are devised, not as traps for the unwary, but for

the convenience of Government officials in passing upon claims for refund and in preparing for trial. Failure to observe them does not necessarily preclude recovery." Statutes must have a reasonable construction, and the language must be interpreted with reference to the subject matter and the general course of business to which they relate, and in such manner that the beneficient provisions of remedial laws may not be thwarted by nice technicalities not within the minds of the legislators. Lynch v. Alworth-Stephens Co., 267 U. S. 364, 370; Old Colony R. R. Co. v. Commissioner of Internal Revenue, — U. S. —, decided February 15, 1932. The evident object aimed at by the law was to have the proceeding for the refund of taxes actually instituted within the time limit, in order to avoid the consideration of stale claims, and not to define the manner in which
39 they should be presented to the commissioner, or to define the limits of his authority to consider and decide matters as to the correct overpayment that might be presented by an amendment to a timely claim prior to his decision thereon. The commissioner considered these claims and after hearing the plaintiff thereon, and considering the facts and information submitted by the plaintiff, determined the overpayment in question upon the grounds specified. The plaintiff is therefore entitled to recover.

Judgment will be entered in favor of plaintiff for $19,995.44, with interest as provided by law. It is so ordered.

GREEN, Judge, and BOOTH, Chief Justice, concur.
WILLIAMS, Judge, dissents.
WHALEY, Judge, took no part in the decision of this case.

40 V. *Judgment*

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $19,995.44, with interest.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of nineteen thousand nine hundred ninety-five dollars and forty-four cents ($19,995.44), with interest at the rate of six per cent per annum from the date of payment thereof to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of subsection (b), section 177 of the Judicial Code, as amended, being a part of the revenue act of May, 1928.

41 [Clerk's certificate to foregoing transcript omitted in printing.]

[Indorsement on cover:] File No. 36,838. Court of Claims. Term No. 141. The United States, petitioner, vs. Factors & Finance Company. Petition for a writ of certiorari and exhibit thereto. Filed June 7, 1932. File No. 36,838.

U. S. GOVERNMENT PRINTING OFFICE: 1932

SUPREME COURT OF THE UNITED STATES

Order allowing certiorari

Filed October 10, 1932

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.